DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

CI 20,666
CI 20,686

In re: 2500 Wisconsin Avenue, N.W.

Ward Three (3)

CARILLON HOUSE, L.P.
Housing Provider/Appellant

v.

CARILLON HOUSE TENANTS ASSOCIATION
Tenant/Appellee

DECISION AND ORDER

June 16, 2000

LONG, COMMISSIONER. These cases are on appeal from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), Rental Accommodation and Conversion Division (RACD) through the Office of Adjudication (OAD), to the Rental Housing Commission (Commission), pursuant to the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. Code § 45-2501 et seq., and the District of Columbia Administrative Procedure Act (DCAPA), D.C. Code § 1-1501, et seq. The regulations, 14 DCMR 3800 et seq., also apply.

I. PROCEDURAL HISTORY

The housing provider, Carillon House, L.P., filed Capital Improvement Petition (CI) 20,666 on November 8, 1993 and CI 20,686 on March 29, 1994, for the 488 unit housing accommodation located at 2500 Wisconsin Avenue, N.W. The housing provider secured a $10,500,000.00 multi-purpose loan with a twenty-five (25) year term, and an

interest rate of 9.675%. The housing provider allocated portions of the multi-purpose loan for CI 20,666 and CI 20,686.

The housing provider filed CI 20,666 after completing improvements, which the housing provider argued, were immediately necessary to maintain the health and safety of the tenants. The improvements consisted of a chimney renovation and the replacement of an oil tank. Hearing Examiner Gerald Roper held the adjudicatory hearing in CI 20,666 on February 22, 1994. The tenants appeared pro se, and the housing provider appeared represented by counsel. According to the housing provider's submissions, the total cost of the capital improvements was $352,742.15, which included $131,375.10 in costs, $218.082.67 in interest, and a service charge of $3,284.38. On May 18, 1994, the hearing examiner issued the decision and order in CI 20,666 and granted the housing provider's request for a monthly rent ceiling surcharge of $8.00 per unit. The tenants, through counsel, filed a notice of appeal on June 2, 1994.

On June 15, 1994, Hearing Examiner Carl Bradford held an adjudicatory hearing in CI 20,686. The housing provider and the tenants appeared with counsel, who have represented the parties throughout the proceedings in CI 20,686. In accordance with the hearing examiner's customary request, the tenants' attorney and the housing provider's attorney submitted proposed decisions and orders. On August 12, 1994, the hearing examiner issued a decision and order, which consisted of the verbatim adoption of the housing provider's proposed decision and order. The hearing examiner found the total cost of the capital improvements was $1,617,014.40, which included $602,240.00 in costs, $999,718.40 in interest, and a service charge of $15,056.00. The hearing examiner

granted the capital improvement petition and approved a rent ceiling surcharge of $35.00[1] per unit in CI 20,686. On August 31, 1994 the tenants, through counsel, filed a notice of appeal of the hearing examiner's decision in CI 20,686, challenging, inter alia, the calculation of interest included in the surcharge.

On July 20, 1995, the Commission granted the parties' joint motion to consolidate CI 20,666 and CI 20,686. On December 4, 1996, the tenants' counsel filed a motion to remand CI 20,666 for a hearing de novo, because the OAD record in CI 20,666 had not been certified to the Commission; and the tenants presumed it was lost. The housing provider opposed the motion to remand CI 20,666. The OAD located the file; however, the hearing tapes were missing. On May 16, 1997, the Commission remanded CI 20,666 for a hearing de novo, because the record was incomplete. In spite of the consolidation by the Commission on July 20, 1995, CI 20,666 and CI 20,686 traversed separate paths following the remand of CI 20,666.

On May 6, 1999, the Commission issued its decision and order in CI 20,686 pursuant to the tenants' August 31, 1994 notice of appeal. The Commission affirmed in part, reversed in part, and remanded the hearing examiner's August 12, 1994 decision and order in CI 20,686. The Commission adopted the tenants' theory of calculating the amount of interest included in the rent ceiling surcharge. The housing provider filed a motion for reconsideration of the Commission's decision on May 20, 1999, challenging inter alia, the interest calculation. On July 8, 1999, the majority of the Commission issued its order on reconsideration upholding the interest calculation and remanding the

[1] The formula used to calculate the $35.00 rent ceiling surcharge contained $15,000.00 for asbestos removal, which the Commission disallowed. See Carillon House Tenants Ass'n v. Carillon House, L.P., CI 20,686 (RHC May 6, 1999) at 9.

case to OAD; the order contained a dissenting opinion concerning the calculation of interest.

On remand, the parties submitted a stipulation of the relevant facts and each party's theory concerning the calculation of interest in CI 20,686. On November 2, 1999, Hearing Examiner Bradford, consistent with the Commission's decision and order on remand, adopted the tenants' theory of calculating the amount of interest includable in the rent ceiling surcharge. On November 5, 1999, the housing provider appealed the hearing examiner's decision and order in CI 20,686.

In the interim, CI 20,666 remained pending in OAD following the Commission's May 16, 1997 remand for a hearing de novo. Hearing Examiner Roper did not hold a hearing on remand in CI 20,666, because the parties submitted a joint motion requesting the examiner to approve a stipulation of the relevant facts. The stipulation also contained the tenants' and the housing provider's proposed method of calculating interest, which was the only contested issue. Hearing Examiner Roper issued a decision and order in CI 20,666 on November 26, 1999. The hearing examiner adopted the tenants' method of calculating the interest includable in the rent ceiling surcharge. On December 3, 1999, the housing provider filed a notice of appeal of the hearing examiner's decision in CI 20,666.

On December 28, 1999, the Commission granted the parties' joint motion to consolidate the appeals in CI 20,666 and CI 20,686 and submit the cases on the record without a hearing on appeal.

II. ISSUES ON APPEAL

The housing provider raised nearly identical issues in CI 20,686 and CI 20,666. In CI 20,686, the housing provider stated the "formula used by the Hearing Examiner in accordance with the Decisions of the Rental Housing Commission dated May 6, 1999 and July 8, 1999 to calculate the interest component of the capital improvement surcharge was erroneous." Notice of Appeal at 1. In CI 20,666, the housing provider submitted the "formula used by the Hearing Examiner to calculate the interest component of the capital improvement surcharge was erroneous." Notice of Appeal at 1.

A. The Housing Provider's Theory of Interest Calculation

The housing provider argues the rent ceiling surcharge is based upon the principal, service charge, and the amount of interest that is payable over the twenty-five (25) year term of the loan. It submits the actual amount of interest, which is payable over 25 years on the portion of the loan used for the capital improvements, is used to calculate the rent ceiling surcharge. The housing provider argues one computes the rent ceiling surcharge by determining the monthly payment required to amortize over ninety-six (96) months, the loan that equals the total cost of the improvements, including service charges and interest payable over 25 years; divided by the number of rental units in the housing accommodation.

B. The Tenants' Theory of Calculating Interest

The tenants argue the Act requires the housing provider to calculate interest as if the housing provider secured a loan with a 96-month term. The tenants propose ignoring the actual term of the loan, when determining the amount of interest that is includable in a capital improvement petition. The tenants argue the interest on the loan of money used

for the capital improvement petition must be calculated using a 96-month period of amortization. Once the figure representing interest is calculated using the 96-month period of amortization, the interest is added to the principal and service charges. The tenants posit the total, which includes interest calculated over 96 months, the principal, and the service charge, is re-calculated using a 96-month period of amortization, and the total is divided by the number of rental units in the housing accommodation.

C. The Commission's Holding

The District of Columbia Court of Appeals (DCCA) has instructed the Commission to decide appeals according to the plain meaning of the statute, and not attempt to interpret beyond the statute's plain meaning. Fort Chaplin Park Tenants Ass'n v. Fort Chaplin Park Assocs., CI 20,642 (RHC Apr. 25, 1996) citing Parreco & Sons v. District of Columbia Rental Hous. Comm'n, 567 A.2d 43 (D.C. 1989).

The Act, D.C. Code § 45-2520(c)(1), provides the formula for calculating the rent ceiling surcharge "[i]n the case of [a] building-wide major capital improvement, by dividing the cost over a 96-month period of amortization and by dividing the result by the number of rental units in the housing accommodation." The Act does not provide for the calculation of interest over 96 months, followed by a second calculation of the cost of the capital improvements, including interest and service charges over a 96-month period of amortization.

For the myriad reasons, which are discussed exhaustively below, the majority of the Commission rejects the tenants' theory of interest calculation. Accordingly, the majority reverses Part III.E of the Commission's May 6, 1999 decision and order, the July

8, 1999 Order on Reconsideration, and the decisions and orders in CI 20,666 and CI 20,686 issued by the hearing examiners on remand.

III. DISCUSSION

In conducting an analysis of the proper method for calculating interest, one must be cognizant of the rules of statutory construction; the legislative history surrounding D.C. Code § 45-2520, the enactment of the Rental Housing Act of 1985 Improvement Amendment Act of 1989; and the regulations, 14 DCMR 4210 et seq., which were promulgated to implement the statute.

A. Statutory Construction

In Guerra v. District of Columbia Rental Hous. Comm'n, 501 A.2d 786, 789 (D.C. 1985), the Court held, "it is a basic rule of statutory construction that courts [and administrative tribunals] must follow the plain and ordinary meaning of a statute, because that is the meaning intended by the legislature."[2] (citations omitted). The intent of the legislature is to be found in the words that it has used.[3] "The words used, even in their literal sense, are the primary and ordinarily the most reliable source of interpreting the meaning of any writing." Cabell v. Markham, 148 F.2d 737, 739 (2d Cir. 1945), aff'd 326 U.S. 404 (1954). Accordingly, the Commission must turn to the legislative history, text of the statute, and the regulations to determine the proper means for calculating the interest component of the capital improvement rent ceiling surcharge.

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[2] "Guerra also alludes to 'another basic rule of statutory construction: that statutory provisions must not be viewed in isolation, but together with related provisions.'" Parreco v. District of Columbia Rental Hous. Comm'n, 567 A.2d 43, 49 (D.C. 1989).

[3] In United States v. Goldenberg, 168 U.S. 95 (1897), the Court held "the primary and general rule of statutory construction is that the intent of the law-maker is to be found in the language that he has used; and the cases are few and exceptional in which the letter of the statute is not deemed controlling, and only arise when there are cogent reasons for believing that the letter does not fully justify and accurately disclose the intent." See also Peoples Drug Stores v. District of Columbia, 470 A.2d 751 (D.C. 1983).

B. Legislative History and Statute

On October 19, 1989, the Council of the District of Columbia amended the Act at D.C. Code § 45-2520 to include interest and service charges in the computation of the capital improvement rent ceiling surcharge. See Committee Report on Bill 8-106, the Rental Housing Act of 1985 Improvements Amendment Act of 1989 (Amendment Act). Prior to the passage of the Amendment Act, housing providers were not permitted to recover interest or service charges associated with capital improvement petitions. However, housing providers were entitled to a permanent increase in the rent ceiling based upon the cost of the capital improvements. The rent ceiling increase for each unit remained in perpetuity, and the capital improvement increase was included for purposes of calculating percentage increases in the rent ceiling.

Councilmember Nathanson, the sponsor of the Amendment Act, described the bill in the following manner:

> This bill directs that capital improvement recovery costs will be just that: the recovery of all costs. After complete recovery--including debt service[4]--takes place the amortized monthly amount will be eliminated from the rent payment. ... The bill does not seek to cap the length of time necessary for recovery so that complete recovery may take place. To lessen the immediate monetary impact on tenants, the bill expands the period to be used by the Rent Administrator when determining the monthly surcharge by two years (from 6 to 8 years). (emphasis in original). [5]

The Amendment Act was codified at D.C. Code § 45-2520, which provides in relevant part:

> (c) Any decision of the Rent Administrator under this section shall determine the adjustment of the rent ceiling:

[4] Black's Law Dictionary 365 (5th ed. 1979), defines debt service as "the interest and charges currently payable on a debt, including principal payments."

[5] Capital Improvements Amendment Act of 1989, Introductory Remarks of Councilmember James E. Nathanson (Jan. 17, 1989).

(1) In the case of [a] building-wide major capital improvement, by dividing the cost over a 96-month period of amortization and by dividing the result by the number of rental units in the housing accommodation. No increase under this paragraph may exceed 20% above the current rent ceiling;

....

(3) In the case of a rent increase included as part of the rent ceiling or base rent for a capital improvement after October 19, 1989, the rent increase is temporary and is abated as to each tenant upon recovery of all costs of the capital improvement, including interest and service charges. The rent increase shall not be calculated as part of either the base rent or rent ceiling of a tenant when determining the amount of rent charged. When the housing provider has recovered all costs, including interest and service charges, the housing provider shall recompute and adjust the rent charged to reflect the abatement of the capital improvement rent increase. (emphasis added).

With the passage of the Amendment Act (D.C. Code § 45-2520(c)), housing providers were entitled to a full recovery of all costs associated with the capital improvement petition, including interest and service charges. However, the rent ceiling surcharge was not treated as a permanent rent ceiling adjustment. Instead, the Amendment Act permitted the recovery of all costs associated with the capital improvements through a temporary surcharge.[6] The temporary rent ceiling surcharge is "excluded from the rent ceiling of the rental unit for purposes of calculating percentage increases in the rent ceiling." 14 DCMR 4210.25. After the housing provider recovers all costs, including interest and service charges, the rent ceiling surcharge is eliminated. The predecessor Act and the Amendment Act prohibit the housing provider from increasing the rent ceiling by more than 20%.

Councilmember Nathanson's statement and the plain language of the statute revealed the housing provider's complete recovery of all costs, including debt service, was the intent of the amendment. Debt service is defined as "the interest and charges

[6] See D.C. Code § 45-2520(c)(3) (1996); 14 DCMR 4210.24.

currently payable on a debt, including principal payments."[7] The legislative history revealed that the drafters did not intend to limit the time necessary for the complete recovery of all costs associated with the capital improvement petition; and the 96-month period of amortization was not intended to serve as a bar to the recovery of interest beyond 96 months.[8] The purpose of the 96-month period of amortization was to increase the calculation period from 72 months to 96 months in order to lessen the monetary impact on the tenants.[9]

The Act, D.C. Code § 45-2520, indicates the "cost" is divided over a 96-month period of amortization. The use of the term cost, which is singular, reveals the legislature envisioned the division of the total cost of the capital improvement petition over a 96-month period of amortization. The Act does not provide for the division of "costs" over 96-month "periods" of amortization. The concept that there is an interest component of the rent ceiling surcharge, which is calculated over a 96-month period of amortization, was not born in the statute. Nothing in the plain language of the statute supports the contention that interest must be calculated using a 96-month period of amortization, followed by a second calculation of the principal, interest, and service charges over a second 96-month period of amortization.

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[7] See infra note 4.

[8] See 14 DCMR 4210.20, page 12 infra.

[9] Councilmember Ray, Chairman of the Committee on Consumer and Regulatory Affairs that met to consider the Amendment Act, noted the "provisions in section 210 which discuss amortization were merely a formula to compute the rent increase to the tenant resulting from the capital improvements. ..." Committee Report on Bill 8-106 at 12.

C. The Regulations

Following the enactment of the statute, 14 DCMR §§ 4210.10 through 4210.44 were promulgated to implement the Amendment Act.[10] However, before the regulations were permanently implemented, they were published in the District of Columbia Register for review and comment. The Commission received comments and proposed amendments to the regulations from the Council of the District of Columbia and other arms of the District of Columbia Government; organizations representing tenants and housing providers; Greenstein, DeLorme & Luchs, which represents the housing provider in the instant case; and Eisen & Rome, which represents the tenants in the instant case. After receiving comments from these entities, the Commission revised the proposed regulations. The resulting regulations were validly promulgated at 14 DCMR §§ 4210.10 through 4210.44.

Validly promulgated regulations are binding and have the force and effect of law.[11] The agency is bound by its regulations that interpret the statute the agency is authorized to administer,[12] unless the regulations conflict with the enabling statute. In the instant case, the statute and regulations are congruent. The legislature's intent to enable the housing provider to recover all costs, including the total amount of interest payable on the loan, was reiterated throughout 14 DCMR §§ 4210.10 through 4210.44. For example, 14 DCMR 4210.19 provides:

> The amount of a rent ceiling surcharge which a housing provider may take and perfect pursuant to the final order of the Rent Administrator on a capital improvement petition which affects an entire building or housing accommodation

[10] See 14 DCMR 4210.16.

[11] See Dankman v. District of Columbia Bd. of Elections and Ethics, 443 A.2d 507, 513 (D.C. 1981) cited in Cambridge Management v. District of Columbia Rental Hous. Comm'n, 515 A.2d 721 (D.C. 1986).

[12] Id.

shall be the amount computed as set forth in this subsection. In computing the rent ceiling surcharge the housing provider shall do the following:

(a) Determine the monthly payment required to amortize, over a calculation period of ninety-six (96) months, a loan in an amount equal to the total costs of the capital improvements, including service charges as defined in §4210.40(b), and interest on the loan at the rate determined in accordance with §4210.41; and

(b) Divide the amount calculated in paragraph (a) by the number of rental units in the building or housing accommodation to obtain the dollar amount of the rent ceiling surcharge for each rental unit in the housing accommodation; Provided, that no rent ceiling surcharge may exceed twenty percent (20%) of the rent ceiling of the rental unit in effect at the time the petition is filed.

According to the unequivocal language of 14 DCMR 4210.19, the loan is amortized over 96 months. The loan includes the cost of the capital improvements, the interest on the loan, and the service charges associated with the loan. The tenants' concept of amortizing the interest over 96 months, and then amortizing the principal, 96 months of interest, and the service charge over 96 months is not supported by the plain language of the statute or the regulation, 14 DCMR 4210.19.

Moreover, 14 DCMR 4210.20 provides:

> The ninety-six (96) month period referred to in §4210.19(a) and the percentage referred to in §4210.19(b) shall be solely applicable to the calculation of the monthly amount of the rent ceiling surcharge and are not to be factors in determining the permitted duration of a capital improvement rent ceiling surcharge or rent increase, which shall be determined on the basis of the **actual** recovery by the housing provider of **all costs**, including interest and service charges, of the capital improvements, in accordance with §§4210.23 through 4210.38. (emphasis added).

The concept of interest being amortized over 96-months is inconsistent with the plain language of 14 DCMR 4210.20, which provides that the 96-month period is solely applicable to the calculation of the amount of the rent ceiling surcharge. The regulation

does not state that the 96-month period is applicable to the calculation of the amount of interest included in the rent ceiling surcharge.

The term interest is defined in 14 DCMR 4210.40(a) as "all compensation paid by the housing provider to a lender for the use, forbearance or detention of money used to perform a capital improvement." The definition of interest supports the housing provider's position that it is entitled to the interest payable to the lender under the terms of the loan. There is no reference to a 96-month period of amortization found in the regulation's definition of interest.

The regulation, 14 DCMR 4210.41, illustrates that the drafters envisioned the scenario encountered in the instant petitions, where a portion of a multi-purpose loan was used to perform the capital improvements. The regulation also prescribes the proper method for determining the amount of interest includable in the surcharge. It provides, in relevant part:

> The amount of interest which shall be includable by a housing provider in a capital improvement petition for purposes of the calculation under §4210.19(a) or §4210.21(a) as applicable, shall be one of the following:
>
> (a) The amount of interest payable by the housing provider at a fixed rate of interest ... on that portion of a multi-purpose loan of money used to perform the capital improvement...

14 DCMR 4210.41. This regulation provides for the inclusion of the amount of interest payable on the portion of the loan used for the capital improvement. The amount that is payable by the housing provider in the instant case is based upon the 25-year term of the loan. If the regulations mandated the calculation of the interest over a 96-month period of amortization, the regulation would have provided, for example, for the inclusion of the amount of interest payable by the housing provider at a fixed rate of interest on that

portion of a multi-purpose loan of money used to perform the capital improvement, calculated over a 96-month period of amortization. There is no reference to a 96-month period of amortization in 14 DCMR 4210.41, which instructs the housing provider on the proper method of determining the amount of interest that shall be includable for purposes of the calculation under 14 DCMR 4210.19(a).

The regulation, 14 DCMR 4210.42, indicates the drafters anticipated housing providers securing loans whose terms exceeded the calculation period for the rent ceiling surcharge. It provides:

> If the term of the loan obtained by the housing provider to pay for the capital improvement exceeds the calculation period for the rent ceiling surcharge in accordance with §4210.19 or §4210.21, the rent ceiling surcharge shall continue until the loan is fully discharged; Provided, that the provisions of §4210.43 shall apply when the housing provider has recovered an amount equal to the sum of the following:
>
> (a) The total costs of the capital improvements;
>
> (b) The allowable service charges; and
>
> (c) The interest payments made up to that time.

(emphasis added). The regulation, 14 DCMR 4210.42, recognizes the fact that the term of the loan may exceed the calculation period for the rent ceiling surcharge, and it provides for the continuation of the surcharge until the loan is fully discharged. The regulation does not require the housing provider to calculate interest over 96 months in an effort to bring the terms of the loan into conformity with the 96-month calculation period for the rent ceiling surcharge. The regulation, 14 DCMR 4210.43 provides, "[t]he amount of the rent ceiling surcharge shall be reduced to equal the average amount of the interest payments on the loan due during the next twelve months; thereafter, the

surcharge shall be similarly adjusted at twelve (12) month intervals until the loan is paid in full."

Any notion that the housing provider is not entitled to recover all of the interest payable on the portion of the loan used for the capital improvements, is also dispelled by 14 DCMR 4210.32, which provides in relevant part:

> The total costs, including interest and service charges of the capital improvements, which shall be based upon such costs, interest and service charges as have been approved by the Rent Administrator (including all interest payable on any loan approved by the Rent Administrator, the terms of such loan, including the interest rate set forth in the decision on the capital improvement petition, and any amendment to such decision); .... (emphasis added).

D. Analysis

The legislative history revealed the provisions of D.C. Code § 45-2520 that "discuss amortization were merely the formula to compute the rent increase to the tenant resulting from the capital improvements." Committee Report on Bill 8-106 at 12. The Act, D.C. Code § 45-2520(c), provides for a division of the total cost over a 96-month period of amortization. The regulation, 14 DCMR 4210.19, illustrates the 96-month period is used to determine the monthly payment required to amortize over 96 months, a loan, which equals the total cost of the capital improvement, including interest and service charges. The regulation, 14 DCMR 4210.32(a), reveals the total costs includes "all interest payable on any loan approved by the Rent Administrator."

The Court has "repeatedly held that a regulation issued by an administrative agency must be 'consistent with the statute under which it is promulgated.' (citations omitted). Common sense tells us that the same must be true of any agency action: that it may not be contrary to or inconsistent with the statute under which the agency purports to

act."[13] When conducting its review of the interest calculation, the Commission is mindful of the fact that its interpretation of 14 DCMR 4210 et seq. must be consistent with D.C. Code § 45-2520. Since the statute is unambiguous, the agency's action must be consistent with the procedures required by the statute.[14]

When one considers the legislative history of the Amendment Act and the explicit terms of the statute and regulations, one realizes the actual recovery of all costs was the intent of the drafters. The regulations' recurring reference to the recovery of the total cost of the capital improvements, including interest and service charges, and the provisions for the continuation of the surcharge to enable the housing provider to recover costs beyond the calculation period for the rent ceiling surcharge, embody the legislature's intent. It was the mis-interpretation of the 96-month period of amortization that led to the divergent views concerning the interest calculation.

IV. DISCUSSION OF THE ISSUES

Whether the formula used by the hearing examiners to calculate the interest component of the capital improvement surcharge in CI 20,666 and CI 20,686 was erroneous.

The hearing examiners, who followed the Commission's May 6, 1999 decision and its July 8, 1999 order on reconsideration, adopted the theory of interest calculation advanced by the tenants. Accordingly, an in-depth review of the tenants' position follows.

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[13] Columbia Realty Venture v. District of Columbia Rental Hous. Comm'n, 590 A.2d 1043, 1046 (D.C. 1991) (quoting District of Columbia v. Catholic University, 397 A.2d 915, 919 (D.C. 1979)).

[14] Id.

In its submissions the tenants stated, "interest should be calculated on the basis of a fully amortizing eight year loan at the fixed percentage rate."[15] The tenants' position is diametrically opposed to D.C. Code § 45-2520. Pursuant to D.C. Code § 45-2520(c), "[a]ny decision of the Rent Administrator under this section shall determine the adjustment of the rent ceiling: [i]n the case of a building-wide major capital improvement, by dividing the cost over a 96-month period of amortization and by dividing the result by the number of rental units in the housing accommodation." The Act does not merely mention a 96-month period of time; the Act specifies a 96-month period of amortization, which is used solely to determine the rent ceiling surcharge. If the cost of the capital improvement is calculated in accordance with the terms of the Act and regulations, the total cost, including the principal, interest, and service charges, is amortized over 96 months. The total is divided by the total number of rental units. The Act does not separate interest from the principal and service charges in order to perform the calculation to determine the tenants' monthly payment.

The regulation, 14 DCMR 4210.41, unequivocally provides that "the amount of interest which shall be includable by a housing provider in a capital improvement petition is that amount of interest payable by the housing provider at a fixed rate of interest ... on that portion of a multi-purpose loan of money used to perform the capital improvement." (emphasis added). The regulations require the housing provider to compute the rent ceiling surcharge by "determin[ing] the monthly payment required to amortize, over a calculation period of ninety-six (96) months, a loan in an amount equal to the total costs of the capital improvements, including interest and service charges...." 14 DCMR

[15] Tenants' Proposed Decision and Order at 4-5.

4210.19. The loan, which includes the interest on the loan and the service charges associated with the loan, is simply amortized over 96 months to determine the tenants' monthly payment. Neither the Act nor the regulations require the housing provider to perform a separate calculation to determine interest on the principal over a 96-month period. When one reads the statute in isolation, or in conjunction with the regulations, it is evident that the tenants' position runs afoul of the terms of D.C. Code § 45-2520(c).

The tenants maintain it is unfair to include the actual amount of interest over the 25-year term of the loan. "The District of Columbia Court of Appeals has recognized 'that the statutory formula could work an injustice in an individual case,' but declined to rewrite the statue, or to supply omissions in it, in order to make it more fair.'" Tenants of Marbury Plaza v. Marbury Assocs., CIs 20,496 & 20,497 (RHC Aug. 13, 1992) at 34 quoting 1841 Columbia Rd. Tenants Assocs. v. District of Columbia Rental Hous. Comm'n, 575 A.2d 306, 308 (D.C. 1990). Since there is a possibility that the housing provider may recover the costs of the capital improvements in eight years, the tenants argue they should not be required to pay interest over the actual term of the loan.

The tenants' position, which ignores the explicit terms of the Act, regulations, and legislative history, is premised upon the assumption that the housing provider will recover the costs of the capital improvements in eight years through collected rent. This position also ignores the reality of vacancies, Drayton[16] stays, the payment of rent into the court registry, the non-payment of rent, and a host of other factors that contribute to the non-payment or absence of direct payment of rent to the housing provider. In addition, the argument advanced by the tenants ignores the fact that the housing provider

[16] Drayton v. Porestsky Management, Inc., 462 A.2d 1115 (D.C. 1983).

remains liable to the lender for repayment of the loan, including debt service, notwithstanding receipt or non-receipt of the rent ceiling surcharge. The housing provider remains liable to the lender for the repayment of interest and service charges payable on a loan with a twenty-five year repayment schedule.

The housing provider proved $587,240.00 is the portion of the multi-purpose loan associated with the capital improvements in CI 20,686. The "amount of interest payable ... on that portion of the loan,"[17] over twenty-five years, is $974,700.84. The service charge is $15,056.[18] The rent ceiling surcharge is determined by dividing the total [$1,576,996.84][19] over a 96-month period of amortization and by dividing the result by the 488 units in the housing accommodation in accordance with D.C. Code § 45-2520(c)(1). The result, $34.00, is the amount of the rent ceiling surcharge for each unit in the housing accommodation.

The same method is employed to calculate the rent ceiling surcharge in CI 20,666. The total cost of the capital improvements in CI 20,666 was $352,429.00. This figure includes $131,375.10 in costs, $217,770.00 in interest over twenty-five years, and a service charge of $3,284.38. The rent ceiling surcharge is determined by dividing the total, $352,429.00, over a 96-month period of amortization and by dividing the result by the 488 units in the housing accommodation, pursuant to D.C. Code § 45-2520(c)(1).

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[17] 14 DCMR 4210.41.

[18] The tenants did not dispute the service charge.

[19] On page two of the stipulation submitted to the hearing examiner, the parties indicated $1,076,997.00 was the cost of the improvements, including interest and service charges. When the majority added the cost of the improvements, interest, and service charges, the total was $1,576,996.84. Using the figure $1,576,996.84 to calculate the rent ceiling surcharge in accordance with the Act, the majority arrived at $34.00, which is reflected on page 2 of the stipulation. It appears the insertion of $1,076,997.00 in the stipulation was a clerical error.

The result, $8.00, is the amount of the rent ceiling surcharge in CI 20,666 for each unit in the housing accommodation.

V. CONCLUSION

The drafters of the legislation envisioned a total recovery of all costs associated with the capital improvement petition. The sponsor of the legislation stated "[t]his bill directs that capital improvement recovery costs will be just that: the recovery of all costs. After complete recovery -- including debt service -- takes place the amortized monthly amount will be eliminated from the rent payment."[20] (emphasis added). The cost referred to in D.C. Code § 45-2520(c) was illuminated in the regulations, which in painstaking detail define interest; the method for determining the amount of interest includable for purposes of the calculation, and the method of calculating the surcharge. The cost, which is amortized over 96 months, includes the principal, interest, and service charges associated with the capital improvement petition. The Act does not require a separation of interest from the principal and services charges in order to calculate the interest over 96 months.

Prior to the enactment of the Amendment Act, housing providers were entitled to a permanent rent ceiling adjustment, which continued after the cost of the capital improvements was recovered. Housing providers were permitted to use the increased rent ceiling as a basis for calculating subsequent rent ceiling adjustments. The Amendment Act restricted housing providers to a temporary rent ceiling surcharge, which they cannot use to calculate subsequent rent ceiling adjustments. However, the

[20] Capital Improvements Amendment Act of 1989, Introductory Remarks of Councilmember James E. Nathanson (Jan. 17, 1989).

Amendment Act enabled housing providers to recover all costs, including interest and services charges, which were not previously available.

Entities representing tenants, housing providers, lending institutions, and others participated in the political, legislative and rule making processes that led to the implementation of D.C. Code § 45-2520(c) and 14 DCMR 4210 et seq.

> The political process is full of give and take, thrust and parry, demand, counter-demand and accommodation. Just as the validity of legislation 'must be considered in the context of the real world, warts and all, with its hard bargaining and legislative compromises,"[21] so too, recognition of the real world must be part of the process of statutory interpretation.

Riggs National Bank v. District of Columbia, 581 A.2d 1229, 1247 (D.C. 1990).

In the real world, the housing provider secured a loan with a twenty-five year term. The interest, on the portion of the loan used for the capital improvement, is $974,700.84 in CI 20,686 and $217,770.00 in CI 20,666. The legislative history, statute and regulations mandate the complete recovery of all costs, including debt service, which is the principal, interest and the service charges payable on the debt. The entitlement to a complete recovery of interest and services charges was effectuated through an amendment of the Act, which eliminated the housing provider's entitlement to a permanent rent ceiling increase.

The resulting legislation and regulations were born following the labor of numerous parties with myriad interests. The results of implementing the Act and regulations may not be equitable in the eyes of all.

> Reasonable people may surely differ as to where the equities lie. "Perhaps the give and take of the political process has, in this instance as in others, produced a less then perfect legislation." (citation omitted). Perfection, however, is not readily achievable, and we cannot say the consequences of a literal reading of the

[21] Hornstein v. Barry, 560 A.2d 530, 535 (D.C. 1989).

> statute are so absurd or unjust that we may rewrite it to achieve a result which some might deem more equitable. In the absence of ambiguity in the statute, correction of any problem that may be presented is the province of the legislature.

Parreco, 567 A.2d at 50 quoting Hornstein, 560 A.2d at 534.

The words of D.C. Code § 45-2520(c) and the relevant regulations are unambiguous. The Court has held that "words are important, and the burden on a litigant who asks the court [or agency] to disregard their plain import is not a light one."[22] The Court has held that the reviewing body will "look beyond the ordinary meaning of the words of a statute only where there are persuasive reasons for doing so." Peoples Drug Stores, 470 A.2d 751, 755 (D.C. 1983). To change the plain meaning of the statute [or its supporting regulations] "creates too great a risk that the Court [or agency] is exercising its own 'WILL instead of JUDGMENT,' with the consequence of substituting 'its own' pleasure to that of the legislative body."[23] (emphasis in original). In order to accept the tenants' theory of the interest computation, the Commission would have to ignore the legislative history, the plain meaning of the statute and several explicit regulations.

The meaning of D.C. Code § 45-2520(c) is readily gleaned from the words found in the statute and its legislative history. The legislative history revealed the complete recovery of debt service was the intent of the drafters. According to the plain language of D.C. Code § 45-2520(c)(3), the housing provider is entitled to the recovery of all costs, including interest and service charges. The regulations, 14 DCMR 4210 et seq., were promulgated to implement D.C. Code § 45-2520 (1996). The regulations were written in accordance with the statute and support the housing provider's contention that it is

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[22] Parreco, 567 A.2d at 46.

[23] Public Citizen v. United States Dep't of Justice, 109 S. Ct. 2558, 2575 (1989) (Kennedy, J., dissenting) (quoting The Federalist No. 78, p. 469 (C. Rossiter ed. 1961) (A. Hamilton)).

entitled to recover the total amount of interest that is payable on the portion of the loan used for the capital improvements in CI 20,666 and CI 20,686. Any interpretation of the Act or regulations that abrogates the recovery of the total amount of interest payable on that portion of the loan would be inconsistent with the statute and regulations under which the agency acts.

The dissent, which follows, relies upon Aardwoolf Corp. v. Nelson Capital Corp., 816 F.2d 46 (2d Cir.1988). The issue before the court in Aardwoolf concerned the prepayment of a long term loan and the borrower's efforts to recover a refund of the proportionate amount of prepaid interest, which the borrower alleged was unearned. In Aardwoolf, the total interest was computed in advance, which the Act and regulations require in the instant case. The court noted, "the taking of interest in advance, [is] a practice as old as the proverbial hills." (citations omitted). Aardwoolf, 861 F.2d at 47. In Aardwoolf, however, the loan did not run the full term, because the debtor prepaid the creditor. The prepayment was in accordance with the terms of the "Loan Commitment [which] provided that prepayment without penalty could be made and that the agreement and the performance of the parties ... would be interpreted in accordance with the laws of New York." Id. The Court also noted that a licensee of the Small Business Administration, which requires parties to comply with the Small Business Investment Act and its regulations, made the loan in Aardwoolf. The applicable regulations mandated the return of any excess resulting from prepayment. In addition, New York legislation and judicial pronouncements prohibited creditors from charging or retaining unearned interest.

The Aardwoolf opinion, which turned on the law and the particular facts of that case, is inapposite with the capital improvement petitions before the Commission. The instant capital improvement petitions are governed by the Rental Housing Act of 1985 at D.C. Code § 45-2520, its legislative history, and regulations. When the interest on the portion of the loan used for the capital improvement is calculated, the loan is not "paid off;" there was no evidence that the loan did not run the full term or that the housing provider pre-paid the loan. Moreover, the tenants and the housing provider do not have a debtor-creditor relationship. The payment of the capital improvement surcharge is not tantamount to the prepayment of the portion of the loan allocated for the capital improvements.

In what appears to be an effort to bring the instant case in line with Aardwoolf, the dissent concluded that the unearned interest prepaid by the tenants "must be refunded to them on a prorated basis after the eighth (8^{th}) year or 96^{th} month." Dissent at 44. This quotation suggests the initial calculation would include the interest over 25 years, followed by a refund at the end of eight years. This is precisely what occurred in Aardwoolf; the total amount of interest payable over the fifteen (15) year term of the loan was calculated at the outset. The borrower pre-paid the loan in approximately six years, and sought a refund of the unearned interest. In Aardwoolf, the Loan Commitment, the Small Business Investment Act's regulations, and the laws of New York prohibited the creditor from retaining unearned interest.

In the instant case, at issue is the amount of interest includable in the calculation of the rent ceiling surcharge. Aardwoolf supports the majority's opinion that the full amount of interest, calculated over the twenty-five (25) year term of the loan is proper.

However, in every other aspect Aardwoolf is distinguishable. At the heart of Aardwoolf is the actual prepayment of the loan, and the borrower's right to a refund following prepayment. The parties before the Commission are not in the same posture as the parties in Aardwoolf. Evidence of prepayment of the loan is not before the Commission in the instant case. Before the Commission is the question of the proper amount of interest includable in the surcharge. Moreover, the jurisdiction, facts and laws governing the instant case are not apposite with those in the Aardwoolf case.

Absent from the dissent is a discussion or analysis of the legislative history surrounding the Amendment Act. As illustrated throughout the majority decision, a review of the legislative history yields the inescapable conclusion that the complete recovery of all costs, including debt service, was the intent of the legislature. The calculation of the total amount of interest over the life of the loan was the intended result.

Accordingly, Part III.E of the Commission's May 6, 1999 decision and order, which directed the hearing examiner to adopt the tenants' theory of interest calculation is reversed; and the majority reverses the Order on Reconsideration issued on July 8, 1999. Hearing Examiner Gerald Roper's use of the tenants' theory of calculating the rent ceiling surcharge in the decision and order issued in CI 20,666 on November 26, 1999 is reversed, because the decision was not in accordance with the provisions of D.C. Code § 45-2520(c).[24] The housing provider is entitled to a rent ceiling surcharge of $8.00 for each rental unit for the capital improvements in CI 20,666. Similarly, Hearing Examiner Carl Bradford's use of the tenants' theory for calculating the rent ceiling surcharge in the decision and order issued in CI 20,686 on November 2, 1999 is reversed

[24] See D.C. Code § 45-2526(h) (1996).

pursuant to D.C. Code § 45-2526(h), because the decision was not in accordance with D.C. Code § 45-2520(c). The housing provider is entitled to recover a rent ceiling surcharge of $34.00 per unit for the capital improvements associated with CI 20,686.

SO ORDERED.

RONALD A. YOUNG, COMMISSIONER

JENNIFER M. LONG, COMMISSIONER

BANKS, CHAIRPERSON. Dissenting:

I. The Issue

The sole issue in the consolidated appeals before the Commission is whether, under the statutory scheme of the Act and its regulations, the Tenants must repay the Housing Provider twenty-five (25) years of interest or eight (8) years of interest during the 96 months (8 years) statutory recovery period for "all costs" of the capital improvements. D.C. Code § 45-2520(b)-(c)(1).

II. Discussion of Cases

A. Procedures for Both Petitions

A detailed procedural history is contained in the Commission's first decision and order in CI 20,686 issued on May 6, 1999, and modified on July 8, 1999 in the Commission's order on reconsideration. Another detailed procedural history authored by Commissioner Jennifer M. Long is contained in the majority decision to this decision and order. Therefore, this dissent will focus on the operative facts relative to the single issue before the Commission.

This case involves the Housing Provider's petition for capital improvements to the multi-family housing accommodation at 2500 Wisconsin Avenue, N.W. The Housing Provider obtained a multipurpose refinance loan, in part, to pay for the capital improvements to the housing accommodation. Under the terms of the Act, the Housing Provider is allowed to recover from the Tenants all costs of the capital improvements, including interest and service charges. D.C. Code § 45-2520(c).[25] Under the terms of the Act, tenants must repay "all costs" within a statutory period of 96 months or (8) years. Id.

The issue is the proper method of calculating the amount of interest on a multipurpose loan, which the Tenants must repay to the Housing Provider as one element of "all costs" the Housing Provider may recover from the Tenants under D.C. Code § 45-2520(c)(3) (1996) related to the two approved capital improvement petitions at the housing accommodation. The costs of the capital improvements in both petitions were included in a 25-year multipurpose refinance loan for $10,500,000.00, which exceeded

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[25] D.C. Code § 45-2520(c) states:

> Any decision of the Rent Administrator under this section shall determine the adjustment of the rent ceiling:
>
> (1) In the case of building-wide major capital improvement, by dividing the cost over a 96-month period of amortization and by dividing the result by the number of rental units in the housing accommodation. No increase under this paragraph may exceed 20% above the current rent ceiling;
>
> (2) In the case of limited improvements to 1 or more rental units in a housing accommodation, by dividing the cost over a 64-month period of amortization and by dividing this result by the number of rental units receiving the improvement. No increase under this paragraph may exceed 15% above the current rent ceiling. The Rent Administrator shall make a determination that the interests of the affected tenants are being protected; and
>
> (3) In the case of a rent increase included as part of the rent ceiling or base rent for a capital improvement after October 19, 1989, the rent increase is temporary and is abated as to each tenant upon recovery of all costs of the capital improvement, including interest and service charges. The rent increase shall not be calculated as part of either the base rent or rent ceiling of a tenant when determining the amount of rent charged. When the housing provider has recovered all costs, including interest and service charges, the

the combined total costs of the capital improvements in both petitions. The loan interest rate was 9.675%. The service charges and interest rate were uncontested.

The housing accommodation is a 488 unit building, which was the subject of the two (2) capital improvement petitions in this consolidated appeal. On November 8, 1993, the Housing Provider filed capital improvement petition, CI 20,666, and on March 29, 1994, filed capital improvement petition, CI 20,686. The initial OAD decision in CI 20,666 was issued on May 18, 1994, by Hearing Examiner Gerald Roper, and the initial decision in CI 20,686 was issued on August 12, 1994, by Hearing Examiner Carl Bradford. The Tenants appealed these decisions to the Commission for several reasons, including raising the issue of the inclusion of twenty-five (25) years of interest for them to repay the Housing Provider, during the eight (8) year recovery period in the Act, rather than eight (8) years of interest. However, the Commission remanded CI 20,666 to OAD for a hearing de novo, because of lost OAD hearing tapes, and therefore did not decide the issue related to the amount of interest the Tenants had to repay the Housing Provider. However, that issue was decided on May 6, 1999, when the Commission decided the appeal only in CI 20,686, while CI 20,666 awaited remand decision in OAD. The May 6, 1999 decision in CI 20,686 remanded CI 20,686 to OAD for recalculation of the interest cost based on eight (8) years of interest, rather than twenty-five (25) years of interest as was determined by the hearing examiner in the initial decision. It also required the deduction of the capital improvement cost for asbestos removal, since there was insufficient record evidence to support that claim.

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housing provider shall recompute and adjust the rent charged to reflect the abatement of the capital improvement rent increase. (emphasis added)

The OAD remand decision in CI 20,686 issued on November 2, 1999, and the Housing Provider appealed the remand decision in CI 20,686 to the Commission. A few weeks later, on November 26, 1999, OAD issued the remand decision in CI 20,666, while CI 20,686 was pending the second appeal in the Commission. On December 3, 1999, the Housing Provider appealed CI 20,666 to the Commission, thereby causing both petitions to be simultaneously pending appeal in the Commission. This second appeal of both petitions raised the opposite issue than was in the Tenants' first appeals. That is, the hearing examiner erred by limiting the recovery of interest on the Tenants' portion of the multipurpose loan to only eight (8) years of interest in conformity with the Commission's May 6, 1999 decision and order, and the July 8, 1999 order on reconsideration, rather than twenty-five (25) years of interest, which was the term of the multipurpose loan. On December 7, 1999, the parties filed a joint motion to consolidate the appeals. The Commission granted the motion and consolidated the two appeals, CI 20,666 and CI 20,686, for disposition.

B. Discussion of CI 20,666

The capital improvement petition in CI 20,666 requested capital improvements, which cost $131,375.10, plus $218,082.67 as interest for 25 years, and $3284.38 for service charges, for the total cost of $352,742.15. (OAD Record (R.) at 96 & 99). Hearing Examiner Gerald Roper granted the capital improvement petition in the OAD decision and order issued on May 18, 1994. On June 2, 1994, the Tenants filed the first appeal in CI 20,666. One of the issues raised in the notice of appeal was the proper calculation of the amount of the Tenants' portion of interest on a multipurpose loan with

a term of twenty-five (25) years, that the Tenants were ordered to repay in the eight (8) year (96-month) recovery period in the Act. D.C. Code § 45-2520(c).

On July 20, 1995, the Commission issued an order consolidating these two capital improvement petitions for decision. However, on May 16, 1997, the Commission remanded CI 20,666 to OAD for a de novo hearing, due to the loss of the OAD hearing tapes. On remand, instead of a hearing de novo, the parties submitted a joint stipulation of the facts, based on the Commission's May 6, 1999 decision and order and July 8, 1999 order on reconsideration in CI 20,686. The stipulation was that the costs of the capital improvements was $131,375.10, the interest on the costs for 96 months (8 years) was $57,840.00, plus service charges totaled $192,499.00. (See stipulation attached to OAD remand decision and order dated November 26, 1999.) On November 26, 1999, Hearing Examiner Gerald Roper issued the remand OAD decision and order, which incorporated the agreed stipulated facts and computation of the new rent ceiling surcharge based on eight (8) years (96 months) of interest, $57,840.00. The hearing examiner concluded the Tenants' rent ceilings would be increased by $4.00 per unit for recovery of all the costs of the capital improvements in CI 20,666. See chart below for calculations.

Cost of the Improvements including Interest and Service charges.	$192,499.00
Divided by 96 months to arrive at the monthly cost of the improvements for [the] housing accommodation.	$2,005.00
Divided by the number of rental units in the housing accommodation[]	488
Equals the cost per unit per month of [sic] the improvements.	$ 4.00

Notwithstanding the stipulation to include only eight (8) years of interest, in conformity with the Commission's decision, the parties also stipulated to the calculations

of the rent ceiling surcharge with twenty-five (25) years of interest, which reflected the Housing Provider's position. Therefore, the stipulation also stated, "[t]he interest claimed by the Housing Provider ... amortized over 25 years, is $217,770.00." Stipulation at p. 2, ¶ 3. "The rent ceiling surcharge, utilizing the interest set forth in Paragraph [sic] 3 above, is $8.00 per unit, per month, as set forth below[.] Id. at ¶ 5.[26]

Cost of the Improvements including Interest and Service charges.	$352,429.00
Divided by 96 months to arrive at the monthly cost of the improvements for housing accommodation	$ 3,671.00
Divided by the number of rental units in the housing accommodation	488
Equals the cost per unit per month of the improvements	$ 8.00

On December 3, 1999, the Housing Provider filed in the Commission a notice of appeal from the OAD decision in CI 20,666. The Housing Provider's appeal issue is "the formula used by the Hearing Examiner to calculate the interest component of the capital improvement surcharge was erroneous."

Notice at 1.

C. Discussion of CI 20,686

In the petition for CI 20,686, the Housing Provider included the cost of the capital improvements, $602,240.00, interest cost of $999,718.40 for 25 years, and service charges of $15,056.00, for the total cost of $1,617,014.00.

At the conclusion of the OAD hearing in CI 20,686, the Tenants submitted "Tenants' [sic] Proposed Decision and Order" in which they argued:

[26] The text of the decision and order, and chart in the first decision and order stated the total "cost of the Improvement including Service charges was $352,742.15." However, the rent ceiling was also $8.00 as stated in the first chart in this decision and order. See decision dated May 18, 1994, at pp. 2 & 13.

> The law provides for the tenants to pay back the full cost of the improvement over an eight-year period. What the petitioner has requested is that, notwithstanding that the loan will be paid back over 8 years, the tenants should pay interest for 25 years. ... Each monthly payment reduces principal, and at the end of the eight years, if properly applied, the loan and interest payment should be retired. Accordingly, interest should be calculated on the basis of a fully amortizing eight-year loan at the fixed percentage rate.
>
> Put differently, what petitioner has done is take out an [sic] 25 year permanent loan, and ask the tenants to finance a greater portion of the refinance than that amount which is attributable to the alleged improvements. However, the tenants can only pay interest so long as the principal for which they are responsible remains outstanding. That should be for only eight years. (emphasis added).

Id. at 4-5.

On August 12, 1994, Hearing Examiner Carl Bradford issued the OAD decision and order in CI 20,686. The hearing examiner's decision and order had findings of facts that the costs of the various capital improvements was $602,240.00, the 25 years of interest was $999,718.40, and service charges were $15,056.00, for a total of "all costs" of $1,617,014.40. The rent ceiling surcharge was calculated to be $35.00 per unit. (Findings of fact numbered 6, 8, 9, & 11.) Decision at 16 & 17. The chart below represents the rent ceiling surcharge calculations in CI 20,686. OAD Decision dated August 12, 1994, at 16.

Computation of Rent Ceiling Increase

Cost of improvements including interest and service charges	$1,617,014.40
Divided by 96 months to arrive at the monthly cost of the improvement [sic] for housing accommodation.	$ 16,843.40
Divided by the number of rental units in the housing accommodation	488
Equals the cost per unit per month of the improvements.	$ 35.00

On August 31, 1994, the Tenants filed the first appeal in this case. One of their appeal issues was, "[w]hether the housing provider met its burden of proof in demonstrating and calculating its interest costs?" Notice of Appeal at 2.

On May 6, 1999, the Commission reversed and remanded the hearing examiner's decision for two reasons: 1) the interest figure used to calculate the Tenants' rent ceiling increase included twenty-five (25) years of interest, rather than the eight (8) years of interest payable during the eight (8) year recovery period in the Act, and 2) the elimination of asbestos removal, as an item of cost in capital improvement petition reduced the original cost of the requested capital improvements from $602,240.00, to $587,240.00.[27] On May 6, 1999, the Commission issued its decision and order, which stated, in relevant part:

> The Commission's regulation, 14 DCMR 4210.19(a), implements the 96 month recovery period in the Act. In addition, the regulation, 14 DCMR 4210.40(a), in pertinent part states, "[i]nterest' shall mean all compensation paid by the housing provider to a lender for the use, forbearance or detention of money used to perform a capital improvement.' This regulation, like the Act, does not refer to proportional costs, rather it refers to 'all compensation' which the Commission interprets to include the amount of the actual costs, service charges, and the actual interest for the 96 month period.
>
> Similarly, 14 DCMR 4210.41(a), states,
>
> The amount of interest which shall be includable by a housing provider in a capital improvement petition for purposes of the calculation under § 4210.19(a) or § 4210.21(a) as applicable, shall be ... the following:
>
> (a) The amount of interest payable by the housing provider at a fixed rate of interest on a loan of money used to perform the capital improvement or that portion of a multi-purpose loan of money used to perform the capital improvement as documented by the housing provider by means of the relevant portion of a *bona fide*

[27] See Commission's order dated June 11, 1999, in this case.

> loan commitment or agreement with a lender, or by such other evidence of interest as shall be satisfactory to the Rent Administrator. (emphasis added.)

This regulation refers to 'that portion of a multi-purpose loan,' and the Commission interprets 'portion' to mean the total of the 'actual cost' of the capital improvements, plus allowable interest and service charges. The word "portion" in the regulation is not synonymous with the word 'proportional.' In the instant case, because the loan greatly exceeds the actual cost of the capital improvements, the tenants repay only that 'portion' of the principal, service charges, and interest on the loan used to perform the capital improvements. In addition, 14 DCMR 4210.42, states,

> If the term of the loan obtained by the housing provider to pay for the capital improvement **exceeds** the calculation period for the rent ceiling surcharge in accordance with §4210.19 or §4210.21, the rent ceiling surcharge shall continue until the loan is fully discharged; Provided, that the provisions of § 4210.43 shall apply when the housing provider has recovered an amount equal to the sum of the following:
>
> (a) The total costs of the capital improvements;
> (b) The allowable service charges; and
> (c) The interest payments up to that time.
>
> (emphasis added.)

This regulation appears to authorize the extension of the surcharge beyond the 96 month (8 years) recovery period. However, the limiting text in 14 DCMR 4210.42 is '[i]f the term of the loan obtained by the housing provider to pay for the capital improvement,' along with the words "total costs" and "the interest payments up to that time." The amount of the loan in this case exceeded the cost of the capital improvements, and the loan "time" length was 25 years, which exceeded the 96 month recovery period. Clearly, this loan which greatly exceeded the amount of the actual costs of the capital improvements and the time for repayment of the loan including interest, was more than triple the eight years (8) allowed by the Act, cannot be the basis for continuation of interest payments after the [other] costs are recovered by the housing provider. Here, the loan obtained by the housing provider was not solely to pay for the capital improvements, as evidenced by the amount of the loan, $10,500,000.00, in contrast with the cost of the capital improvements, $402,296.00.

The regulation, 14 DCMR 4210.42, provides for those cases where the housing provider was limited by the maximum 20% rent ceiling increase and therefore could not recover the costs and service charges in

the 96 months. D.C. Code § 45-2520(c)(1), provides, "[n]o increase under this paragraph may exceed 20% above the current rent ceiling."[28] The regulation, 14 DCMR 4210.42, is consistent with the Commission's interpretation that costs means actual costs, and interest and service charges, must be recovered during the 96 month recovery period, as stated in 14 DCMR 4210.19. See also 14 DCMR 4210.20, which states:

> The ninety-six (96) month period referred to in § 4210.19(a) and the percentage referred to in § 4210.19(b) shall be solely applicable to the calculation of the monthly amount of the rent ceiling surcharge and are not to be factors in determining the permitted duration of a capital improvement rent ceiling surcharge or rent increase, which shall be determined on the basis of the actual recovery by the housing provider of all costs, including interest and service charges, of the capital improvements, in accordance with §§ 4210.23 through 4210.38.

To hold otherwise would render the regulations to be inconsistent with the Act. Where agency regulations conflict with its organic act, the agency must resolve the conflict by deferring to the agency's organic act. Seman v. District of Columbia Rental Housing Commission, 552 A.2d 683 (D.C. 1989).

Accordingly, the housing provider is limited to the recovery of the actual costs plus the interest and service charges on the actual costs, during the 96 month recovery period mandated by the Act and its regulations cited herein, unless it was limited by the 20% maximum rent ceiling increase. There was no testimony in this case that the housing provider was limited by the 20% maximum rent ceiling adjustment. The recovery of all costs, including interest and service charges, does not include the costs, interest and service charges, associated with the portion of a loan that exceeds the value (cost) of the capital improvements, as the loan does in this case.

The rate of the loan was not a contested issue. This appeal issue is granted, and the hearing examiner is reversed.

RHC Decision at 16-20.

The Commission concluded in CI 20,686, as a result of the reversal of the Hearing Examiner on the issues of the amount of interest recoverable by the Housing Provider, and the elimination of the cost of asbestos removal, that the case be remanded for

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[28] 1841 Columbia Road Tenants Association v. District of Columbia Rental Housing Commission, 575 A.2d 306, 308 (D.C 1990). See also 14 DCMR 4210(c).

recalculation of the rent ceiling increase. RHC Decision at 22-23. On July 8, 1999, the majority of the Commission issued the order on reconsideration that confirmed the recovery period was 96 months for both costs and interest. Id. at 7-8.

On November 2, 1999, the Hearing Examiner issued the remand decision and order in CI 20,686, which was based on the Commission's decision quoted above. The remand decision incorporated the stipulation of the parties that followed the Commission's May 6, 1999 decision and July 8, 1999 order on reconsideration by including only eight (8) years of interest in the rent ceiling surcharge calculation. The rent ceiling surcharge was reduced from $35.00 to $18.00 per month.

See chart below.

Cost of Improvements including Interest and Service Charges	$861,269.00
Divided by 96 months to arrive at The monthly cost of the improvements at the housing accommodation.	$ 8,972.00
Divided by the number of rental units in the housing accommodation	488
Equals the cost per unit per month of the improvements	$ 18.00

On November 5, 1999, the Housing Provider appealed the OAD remand decision and order, raising the issue that the hearing examiner and Commission erred by using only (8) eight years of interest, which represented the recovery period, instead of twenty-five (25) years of interest, which represented the term of the refinance loan.

The appeal contained a stipulation between the parties for the rent ceiling increase based on two different interest figures. One figure, $258,972.83, represented eight (8) years of interest on all the costs, and the other figure, $974,700.84, represented 25 years of interest on all the costs.

III. Discussion of the Issue

This is an issue of first impression, where after more than ten years of litigation under the Nathanson Amendment to the Act,[29] a new issue is presented on the proper method of calculating interest for the Tenants to repay their portion of a multipurpose loan with payment terms that exceed the statutory 96-month recovery period in the Act. This issue arises because it is uncontested that the principal (costs of capital improvements, excluding interest) and service charges (costs of loan) are properly included in the Housing Provider's "determination" in the 96 months period of the amortization of the Tenants' portion of the loan. D.C. Code § 45-2520(c).

The Housing Provider and Tenants dispute the amount of interest the Tenants owe the Housing Provider, as part of the recovery of "all costs" of the capital improvements that the Tenants must pay under the statutory scheme of the Act on a twenty-five (25) year loan. The Tenants argued in their brief that they owed the amount of interest that accrued on their portion of the multipurpose capital improvement loan for eight (8) years or 96 months, during the statutory recovery period in the Act. The Tenants' position is based on the Act, D.C. Code § 45-2520(c)(1), that requires the calculation of the rent ceiling adjustment "by dividing the cost over a 96-month period of amortization and by dividing the result by the number of rental units in the housing accommodation."

A. Plain Meaning of Statutory Words

Since this is an issue of first impression, statutory interpretation is required.

> Ordinarily, if the language of a statute is plain and unambiguous, we need look no further than the words themselves because we assume that the language expresses the legislatures' intent .... In seeking to discern that intent, we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it

[29] D.C. Law 8-48, added, inter alia, section (c)(3), quoted above in n.24.

> was designed to implement, and to its relationship to existing legislation and *common law principles* governing the same general subject matter. (citations omitted).

Office of Consumer Counsel v. Department of Public Utility Control, 716 A.2d 78, 85 (Conn. 1998). (emphasis added).

> An agency may change over time the interpretation it gives to a controlling statutory term.... (citations omitted). [T]he [agency] may apply different standards to different situations if each standard is consistent with the regulation and the situations actually are different in a way that makes it reasonable to use different criteria for what is [interpreted].... In order to ensure that all whose claims the agency adjudicates receive fair and equal treatment, however, the agency must explain and justify ... its use of a different standard from one situation to the next.

Draude v. Board of Zoning Adjustment, 527 A.2d 1242, 1253 (D.C. 1987) (citations omitted).

This appeal requires the application of the plain meanings of the two words, "amortize" and "interest," in the Act. D.C. Code § § 45-2520(b)(2), 2520(c)(1). The calculation of the cost of interest in this multipurpose loan is a "different" situation than the terms in the Act, which simply refers to "cost" and "all cost" without distinguishing whether the "cost" of interest is based on a multipurpose or single purpose loan. In addition, the Act does not distinguish from a loan with an eight (8) year amortization period, or a loan that is for fewer or more years.

1. Amortize

The word "amortization" is the noun form of the verb "amortize" which means to "liquidate or extinguish (a mortgage, debt, or other obligation), esp. by periodic payments to the creditor or to a sinking fund." The Random House College Dictionary, (rev. ed. 1982).

2. Interest

Interest is the "[b]asic cost of borrowing money .... "Payments a borrower pays a lender for the use of the money." Henry Campbell Black, Black's Law Dictionary, (5th ed. 1979). In case law, "interest" is defined as a cost to "[f]airly compensate for ... the lost time value of money." Amax Land Company v. Quarterman, 181 F.3d 1356 (D.C. Cir. 1999), or "compensation for the loan of use of money" or "a charge for the use of money." Smith v. Anderson, 801 F.2d 661 (4th Cir. 1986). "The amount financed is derived by making certain adjustments to the principal loan amount, most notably the subtraction of any prepaid finance charge. See 12 C.F.R. § 226.18(b)." Id. at 663. (emphasis added). The case law definitions are similar to the regulation under the Act that defines interest as:

> [f]or purposes of § § 4210.16 through 4210.44 the following terms shall have the meaning ascribed.
>
> (a) 'Interest' shall mean all compensation paid by the housing provider to a lender for the use, forbearance or detention of money used to perform a capital improvement. A loan of such money used to perform a capital improvement need not be secured by the housing accommodation.
>
> ....

14 DCMR 4210.40.

3. The Regulations

The words "amortize" and "interest" are in the following relevant regulations under the Act.

14 DCMR 4210.19 states:

> The amount of a rent ceiling surcharge which a housing provider may take and perfect pursuant to the final order of the Rent Administrator on a capital improvement petition which affects an entire building or housing accommodation shall be the amount computed as set forth in this

subsection. In computing the rent ceiling surcharge the housing provider shall do the following:

(a) Determine the monthly payment required to **amortize**, over a calculation period of ninety-six (96) months, a loan in an amount equal to the total costs of the capital improvements, including service charges as defined in § 4210.40(b), and interest on the loan at the rate determined in accordance with § 4210.41; and

(b) Divide the amount calculated in paragraph (a) by the number of rental units in the building or housing accommodation to obtain the dollar amount of the rent ceiling surcharge for each rental unit in the housing accommodation; Provided, that no rent ceiling surcharge may exceed twenty percent (20%) of the rent ceiling of the rental unit in effect at the time the petition is filed.

14 DCMR 4210.20 states:

The ninety-six (96) month period referred to in § 4210.19(a) and the percentage referred to in § 4210.19(b) shall be solely applicable to the calculation of the monthly amount of the rent ceiling surcharge and are not to be factors in determining the permitted duration of a capital improvement rent ceiling surcharge or rent increase, which shall be determined on the basis of the actual recovery by the housing provider of all costs, including **interest** and service charges, of the capital improvements, in accordance with §§ 4210.23 through 4210.38. (emphasis added).

14 DCMR 4210.27 states:

A capital improvement rent ceiling surcharge shall be in effect from the date of its perfection pursuant to § 4210.23 until the date on which the housing provider has actually recovered in collected rent all costs, including **interest** and service charges, of the capital improvement.

14 DCMR 4210.41 states:

The amount of **interest** which shall be includable by a housing provider in a capital improvement petition for purposes of the calculation under § 4210.19(a) or § 4210.21(a), as applicable, shall be one of the following:

(a) The amount of **interest** payable by the housing provider at a fixed rate of **interest** on a loan of money used to perform

> the capital improvement or on that portion of a multi-purpose loan of money used to perform the capital improvement as documented by the housing provider by means of the relevant portion of a *bona fide* loan commitment or agreement with a lender, or by such other evidence of **interest** as shall be satisfactory to the Rent Administrator; .... (emphasis added).

14 DCMR 4210.42 states:

> If the term of the loan obtained by the housing provider to pay for the capital improvement exceeds the calculation period for the rent ceiling surcharge in accordance with § 4210.19 or § 4210.21, the rent ceiling surcharge shall continue until the loan is fully discharged; Provided, that the provisions of § 4210.43 shall apply when the housing provider has recovered an amount equal to the sum of the following:
>
> (a) The total costs of the capital improvements;
> (b) The allowable service charges;
> (c) The **interest** payments made up to that time.

14 DCMR 4210.43

> The amount of the rent ceiling surcharge shall be reduced to equal the average monthly amount of the **interest** payments on the loan due during the next twelve (12) months; thereafter, the surcharge shall be similarly adjusted at twelve (12) month intervals until the loan is paid in full.

B. The Analysis

Using the words and definitions for "amortize" and "interest," the first step in the regulations is to "determine the monthly payment required to **amortize** [meaning to extinguish the debt] over a calculation period of ninety-six (96) months, a loan in an amount equal to the total costs of the capital improvements, including service charges as defined in § 4210.40(b), and **interest** on the loan ...." 14 DCMR 4210.19. (emphasis added).

The "determination" how to liquidate the tenants' portion of the multipurpose loan necessarily involves mathematical calculations, which are not all stated in the Act.

Indeed, the Act does not mention a "multipurpose loan," for capital improvements and how to calculate the recovery of "all costs" from the Tenants, as do the regulations, 14 DCMR 4210.41. *Specifically, the Act and the regulations do not state how to "determine" the cost of interest in a multipurpose loan, which exceeds the cost of the capital improvements and exceeds the 96-month recovery period.* Therefore, the Commission should interpret the regulations consistent with the statutory scheme and the common law. See Office of Consumer Counsel, supra. The statutory interpretation should comport with the general purpose of the Act. Slaby v. District of Columbia Rental Housing Comm'n, 685 A.2d 1166, 1167 (1996), cert denied 520 U.S. 1190 (1997). Two of the general purposes of the Act are: "[t]o protect low-and moderate-income tenants from the erosion of their income from increased housing costs;" and "to prevent the erosion of moderately priced rental housing while providing housing providers and developers with a reasonable rate of return on their investments." D.C. Code § 45-2502(1) & (5).

One common law rule related to the "determination" of interest owed is that "unearned" interest cannot be collected. The court in Aardwoolf Corp. v. Nelson Capital Corp., 861 F.2d 46 (2nd Cir. 1988) considered a case where the debtor prepaid interest, as a discount on a loan, and prepaid the loan nine (9) years sooner than allowed by the terms of the loan. Aardwoolf is similar to this case, since the Tenants here were required to prepay twenty-five (25) years of interest in eight (8) years on a twenty-five (25) year loan. The court in Aardwoolf discussed the principles of unearned interest and stated:

> When, as here, the discounted interest is intended to cover the full term of the loan, part of it becomes unearned if for any lawful reason the loan does not run full term. If the unearned interest were not refunded, the asserted interest rate of fifteen percent per annum, based on a fifteen-year

commitment, actually would be substantially higher. In our view, New York legislation and judicial pronouncements demonstrate a consistent intent to deny a creditor the right to charge or retain interest that is unearned.

Id. at 46.

...

From the standpoint of a debtor, the traditional favorite of both legislatures and courts, there is little practical difference between the right to recover *unearned interest following lawful prepayment of principal* and *the right to recover unearned interest following lawful acceleration* by the creditor. (citations omitted). (emphasis added).

Id.

...

Although the Uniform Consumer Credit Code, promulgated by the National Conference of Commissioners on Uniform State Laws, has not been adopted in New York, section 3.210(8) of that Code also contains rebate requirements that apply regardless of whether there has been a voluntary prepayment or an acceleration of the indebtedness on default. (emphasis added).

Id. at 48.

The mere fact that the total interest is computed in advance and added in equal proportions to and included in the face amount of notes, as a form of prepaid interest or discount, does not change **the equitable principle that the unearned part of the interest must be deducted upon acceleration and payment of an indebtedness prior to maturity.** (citations omitted). (emphasis added).

Id. at 48. The court in Aardwoolf concluded that the remedy for the prepaid and unearned interest was that it had to be prorated.

In the instant case, at the end of the 96 month period of amortization in the Act, the Tenants will have "amortized" (paid off) the principal (costs of capital improvements) calculated to be their share of the multipurpose loan, meaning paid off or liquidated the principal, and twenty five (25) years of "interest" on their portion of the loan in only eight (8) years. If the Tenants are required to pay all of the twenty-five (25) years of interest in the multipurpose loan, then in eight (8) years the Tenants in CI 20,666

and CI 20,686, will have prepaid seventeen (17) extra years of unearned interest originally calculated as a part of the twenty-five (25) year term of the loan. In other words, at the end of eight (8) years the Tenants will have prepaid (25 – 8 = 17) seventeen (17) years of unearned interest on a twenty-five (25) year loan. That will violate "the equitable principle that the unearned part of the interest must be deducted upon acceleration and payment of an indebtedness prior to maturity." (emphasis added). Aardwoolf, at 48, quoted above at 44.

Therefore, the dissent concludes, in conformity with the equitable principle, that under the first decisions of the hearing examiners before the Commission's remand, the Tenants will have prepaid unearned interest, and it must be refunded to them on a prorated basis, after the eighth (8^{th}) year or 96^{th} month. If the unearned interest were not refunded, the asserted interest rate of [9.675] percent per annum, based on a [twenty-five] year commitment, actually would be substantially higher. Aardwoolf at 46, quoted supra. Thus, the failure to refund to the Tenants the prorated years of unearned interest would be tantamount to a windfall profit for the Housing Provider, rather than a repayment of "all costs," as required by the Act. A profit from prepaid interest was not intended by the requirement for payment of all costs of the capital improvements by the Tenants. D.C. Code 45-2520(c), n.24. The Housing Provider is assured of recovery of all costs by keeping the surcharge "in effect from the date of its perfection ... until the date on which the housing provider has actually recovered in collected rent all costs, including interest...." 14 DCMR 4210.27. This case is not about how long the surcharge remains in effect, but rather how much interest is includable in the surcharge calculations. Again, is it twenty-five (25) years or eight (8) years of interest?

The dissent notes, if the transaction in this case had been a residential loan, then the District of Columbia law in D.C. Code § 28-3301(f) would apply. It in pertinent part states:

> A loan or financial transaction which is secured by a mortgage or deed of trust on residential real property, or a security interest, ... shall meet all of the following requirements:
>
> (1) the loan or financial transaction may be **prepaid** by the borrower **at no penalty** at any time following the expiration of 3 years from the execution of the loan or financial transaction." (emphasis added).

District of Columbia Code § 28-3301(f) is an example of persuasive authority of the law against penalties for prepaid interest. It is a penalty to require the Tenants to prepay seventeen (17) years interest, representing years nine (9) through twenty-five (25), in the eight (8) year recovery period in the Act on the Housing Provider's loan financed for twenty-five (25) years. The Tenants were not the borrowers with the financial institution that refinanced the housing accommodation, however, they are by the terms of the Act, in a debtor creditor relationship or a borrower lender relationship with the Housing Provider, which "determined" the amount of interest on the Tenants' portion of the refinance loan. Here, the Tenants' indebtedness as stated in the capital improvement petitions included 25 years of interest, which will be prepaid in the eight (8) years recovery and amortization period as stated in the Act. D.C. Code § 45-2520(c)(1). Alternatively stated, the payment of the Tenants' portion of the loan was accelerated from twenty-five (25) to eight (8) years, causing the Tenants to be obligated to prepay 17 years of unearned interest. That violated the "equitable principle" against unearned interest. Aardwoolf, at 48, quoted above at 44. It also caused the Tenants to be obligated to pay a

penalty for prepayment of their portion of the loan, caused by the interpretation of the terms of the Act by the majority.

Limiting the interest recoverable from the Tenants on capital improvements to eight (8) years does not nullify any of the existing regulations under the Act on capital improvements. The substance of this decision is that the proper figure to use to calculate the rent ceiling increase is a figure that includes eight (8) years of interest, as was approved by the hearing examiners in the two remand decisions in this case, not a figure containing twenty-five (25) years of interest.

In all matters the regulations remain unchanged. Specifically, the dissent does not alter the length of time a surcharge remains in effect. The regulation, 14 DCMR 4210.42, requires "the rent ceiling surcharge shall continue until the loan is fully discharged; Provided, that the provisions of § 4210.43 shall apply when the housing provider has recovered an amount equal to the sum of the following ... (c) [t]he interest payments up to that time." Clearly, the "loan is fully discharged" meaning the costs chargeable to the Tenants consisting of principal, service charges, and allowable interest, when the Tenants pay in full the "principal and service charges." Once the principal is paid in full, there is no "principal" or basis for interest to continue to accrue. Aardwoolf. That is concomitant with the requirement in 14 DCMR 4210.42(c) that the Housing Provider recover on a loan, which has repayment terms that exceed the calculation period in the Act, only "[t]he interest payments made up to that time," meaning up to the end of the eight year recovery period in the Act, as stated in 14 DCMR 4210.19 or .21." (emphasis added). In other words, this regulation implements the equitable principles against unearned interest stated in Aardwoolf.

The next regulation, 14 DCMR 4210.43, requires the Housing Provider to adjust the surcharge to the average monthly interest payments until the loan is paid in full. "Until the loan is paid in full" means the length of time to repay the Tenants' portion of the loan, not the full term (25 years) for the Housing Provider

The dissent agrees with the majority, that full payment of the Tenants' portion of the loan may be extended beyond the eight (8) years, if the Housing Provider did not recover the full principal, interest, and service charges due to vacancies, skips, or court actions involving Drayton stays and escrow accounts. 14 DCMR 4210.27. This type of extension does not involve additional interest, rather it authorizes the Housing Provider's ability to collect the interest owed during the 96 month recovery period, but not collected due to vacancies, skips, etc. (See majority at 18, supra.) Therefore, "until the loan is paid in full" should be interpreted to mean any uncollected interest from the Tenants' portion of the loan, not the housing provider's portion that extends from years nine (9) through twenty-five (25).

This dissent is in line with the daily processing of commercial loans and residential mortgages, which may be prepaid at any time, after three years, with routine refunds made of unearned interest. D.C. Code § 28-3301(f). The essence of this dissent is that on the front end of the calculations to "determine the monthly payment required to amortize, over a calculation period of ninety-six (96) months, a loan in an amount equal to the total costs of the capital improvements," pursuant to 14 DCMR 4210.19, the Housing Provider may not include more than eight (8) years of interest in the initial calculation of the rent ceiling increase, because that would sanction collection from the Tenants of unearned interest against the common law equitable principle of disallowing

unearned interest, and penalties. However, on the back end, after the expiration of the eight (8) years, the Housing Provider continues to have the right to collect any uncollected costs, including interest, as provided in the regulations. 14 DCMR 4210.20&.27.

It is error to confuse the proper amount of interest includable in the calculation of the surcharge, with the length of time the Housing Provider has to collect the properly calculated surcharge. This case is not about the length of time to collect the surcharge. Rather, it is about the amount of interest includable in the initial calculation of the surcharge.

The majority decision is premised, in part, on the formula in the Act, D.C. Code § 45-2520(c), used to "determine" the rent ceiling adjustment.[30] However, the dissent contends that the Act does not describe all the mathematical calculations that the Housing Provider must perform in order to "determine" the Tenants' portion of the cost of interest and principal in a multipurpose loan. For example, the Act does not mention the calculations necessary when a housing provider utilizes a multipurpose loan. In fact, the Act does not use the word "loan." The word "loan" is stated only in the regulations. The Act requires the Housing Provider to determine the "cost" of the capital improvements. Included in "cost" are interest and service charges. D.C. Code § 45-2520(b).

The real world question is how much interest is payable by the Tenants who will have paid in full the "cost" of the capital improvements in 96 months (8 years). There is no guidance in the Act on this issue of costs, including interest, when housing providers use a portion of a multipurpose loan to finance the costs of the capital improvements. In

[30] D.C. Code § 45-2520(c) states the adjustment in the rent ceiling is determined:

the real world, interest is terminated when the loan is paid in full, because there is no principal for the calculation of interest, which is calculated as a percentage of the principal. The Tenants are real world people who deserve the benefit of real world principles related to the nonpayment of interest, after the principal "cost" is paid in full. The formula in the Act states, "divid[e] the cost over a 96 month period of amortization and ... divid[e] the result by the number of rental units in the housing accommodation." It is not violated by the dissent, which simply recognizes, as did the Housing Provider, that there are other mathematical calculations, in addition to those in the formula in the Act, when the "loan" the Tenants must repay is inside or included within a multipurpose loan.

The majority failed to mention that the Housing Provider performed several calculations prior to applying the formula in D.C. Code § 45-2520(c)(1). For example, first, the Housing Provider calculated (outside the terms of the Act) the Tenants' "portion" of the multipurpose refinance loan. Next, the Housing Provider calculated the Tenants' "portion" of the interest over twenty-five (25) years. Neither of these calculations is stated in the Act. Nevertheless, they were appropriate to separate the Tenants' costs from the Housing Provider's other obligations contained in the 25 year loan. The formula in the Act contains the last two calculations after the initial calculations for the determination of the Tenants' loan "costs." The difference between the majority and the dissent is that the dissent would allow only eight (8) years of interest, as the Tenants' portion, while the majority allowed twenty-five (25) years of interest as the Tenants' portion, although the costs of the capital improvements and

---

"... by dividing the cost over a 96 month period of amortization and by dividing the result by the number of rental units in the housing accommodation."

service charges were calculated as if they were paid in full in eight (8) years. Only the interest was separated from the multipurpose loan and calculated for twenty-five (25) years and then included for recovery from the tenants in eight (8) years.

III. Conclusion

The dissent concludes the hearing examiners' remand decisions and orders in CI 20,666 and CI 20,686, which included only eight (8) years of interest, as stipulated by the parties and required by the Commission's May 6, 1999 decision and order, and which did not include twenty-five (25) years of interest, are correct. The Housing Providers should have been ordered by the majority to refund any prepaid and unearned interest to the Tenants on a prorated basis to avoid a windfall profit to the Housing Provider, and to avoid an increase in the interest rate to the Tenants. Aardwoolf. The windfall also violated one of the purposes of the Act, "to protect low- and moderate-income tenants from the erosion of their income from increased housing costs," D.C. Code § 45-2502(1), by the inclusion of prepaid interest in their rent adjustments under the Act.

In dissent.

RUTH R. BANKS, CHAIRPERSON

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in CI 20,666 & CI 20,686 was mailed postage prepaid this 16th day of June 2000 to:

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